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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/612,641	07/01/2003	Cynthia Dianne Maas	19,448	3690
23556	7590	05/11/2005	EXAMINER	
KIMBERLY-CLARK WORLDWIDE, INC. 401 NORTH LAKE STREET NEENAH, WI 54956			HILL, LAURA C	
			ART UNIT	PAPER NUMBER
			3761	

DATE MAILED: 05/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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APPLICATION NO/ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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10-612-641

EXAMINER
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ART UNIT	PAPER
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20050504

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner for Patents

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/612,641	MAAS ET AL.	
	Examiner	Art Unit	
	Laura C. Hill	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |                                                                                                                                                                                |                                                                                        |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                                                                                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                                                                           | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>12/3/03; 3/15, 8/9, 8/9/24/04, 1/7, 2/14/05</u> | <input type="checkbox"/> Other: ____                                                   |

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The information disclosure statement filed 14 February 2005 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language. Specifically, there is no English translation of EP 0460467. It has been placed in the application file, but the information referred to therein has not been considered.

### ***Specification***

2. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. Specifically the abstract is 159 words long.

3. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

The following title is suggested: Disposable Pant-Like Undergarment Comprising a Back Panel with the Greatest Force Elastic Band.

### ***Claim Interpretation***

4. In claim 2 the language "said waist band is located to said exterior surface" is unclear. Examiner interprets this language to include the waistband being located near and/or adjacent to the exterior surface of the diaper.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-3, 8, 10-11, 16 and 21 rejected under 35 U.S.C. 102(b) as being anticipated by Kuwasaka (EP 1,072,243A2). Regarding claims 1, 10 and 16 Kuwasaka discloses a disposable diaper comprising:

a) a front waist region/panel 20 having first and second ends, first and second side edges, elastic members/first and third elastic bands 7 secured along a first end, and a second elastic member 5b secured along a second end;

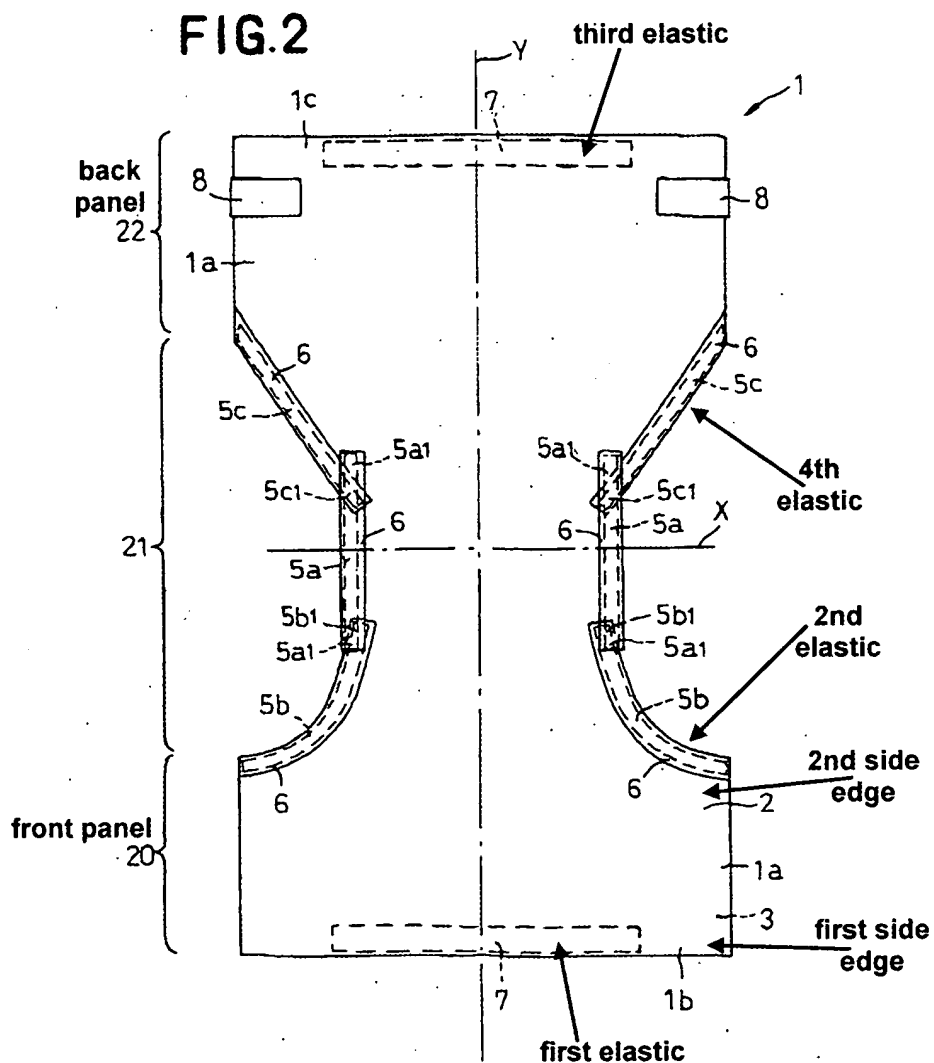
b) a rear waist region/back panel 22 having first and second ends, first and second side edges, elastic members/first and third elastic bands 7 secured along a first end, and a fourth elastic member 5c secured along a second end;

c) an absorbent including a liquid-pervious topsheet 2, liquid-impervious backsheet 3 and absorbent core 4 positioned between, said absorbent being secured to a laminated panel 1, with laminated panel 1 comprising said rear waist region/back panel 22 and said front waist region/panel 20, absorbent assembly on panel 1 is longitudinally folded to join front and rear waist regions/front and back panels

d) a pair of opposite side edges/seams 1a joining front and back panels 20 and 22 together at first and second side edges to form a pant-like undergarment with waist opening 11 and leg openings 10, said first and third elastic bands 7 located adjacent

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waist opening 11, said second and fourth elastic bands 5b and 5c creating a pair of leg bands located adjacent to said leg openings 10, and said fourth elastic member 5c having a stretch stress/stretching force 1.06 to 3 times greater than second elastic member 5b (figures 2 and 4, col. 2, ll. 55-col. 3, line 2, col. 3, ll. 7-11, 22-35 and 40-55, col. 4, ll. 28-32, col. 5, ll. 18-25, col. 6, ll. 34-40).



Regarding claim 2 Kuwasaka discloses the aforementioned diaper with an exterior and interior surface, and a waist band adjacent waist opening 11 located near exterior surface and a pair of leg bands with elastics 5b and 5c located on the interior surface (figures 2 and 4).

Regarding claims 3 and 11 Kuwasaka discloses a stretching force of the fourth elastic band 5c that is greater than that of the second elastic band 5b as discussed in rejected claims 1 and 10 that is capable of having a greater fourth elastic member contraction force than the second elastic member since the fourth elastic member stretches further than the second elastic member. If a prior art structure is capable of performing the intended use as recited in the preamble, then it meets the claim. See, e.g., *In re Schreiber*, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997).

Regarding claim 8 Kuwasaka discloses first elastic 7 extending between first and second side edges of front panel 20 and third elastic 7 extending between first and second side edges of back panel 22 (figure 2).

Regarding claim 21 Kuwasaka discloses the waistband elastics 7 and leg band elastics 5a, which like other elastics well known to those skilled in the art are capable of being stretched at least 200% from an initial length. If a prior art structure is capable of performing the intended use as recited in the preamble, then it meets the claim. See, e.g., *In re Schreiber*, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claims 4-7, 9, 12-15, 17-20 rejected under 35 U.S.C. 103(a) as being

unpatentable over Kuwasaka (EP 1,072,243A2). Regarding claims 4-7 and 17

Kuwasaka discloses greater fourth elastic than second elastic stretching force capable

of having a greater fourth elastic contraction force as discussed in rejected claims 1 and

3. Kuwasaka further discloses an intermediary stretch stress 5a in the crotch region of

0.0224-0.2716 gf/mm<sup>2</sup> to improve occurrence of compression marks due to the elastic

members and improve leakage prevention of the article (col. 1, ll. 39-44 and col. 3, ll.

47-48). Kuwasaka does not expressly disclose the forces of the first and third elastic

bands in the waistband or the forces of the front and back panels 20 and 22. It would be

obvious to one of ordinary skill in the art at the time the invention was made that the

fourth elastic band has the greatest stretching and contraction force of all the members

since the Kuwasaka reference discloses a disposable pant-like diaper with varying

regions of stretching force contained in the elastics for improved fit and leakage

prevention.



Regarding claims 9 and 12-13 Kuwasaka discloses second and fourth elastic members 5b and 5c are secured under tension to strips of nonwoven 6 to peripheries of respective leg-holes 10 and along peripheral edge of waist-hole 11 under tension (col. 5, ll. 19-25 and figures 1-3). Kuwasaka does not expressly disclose the absorbent assembly overlaps second and fourth elastic members 5b and 5c or that the second and fourth members are rendered non-elastic when overlapped. It would be obvious to one of ordinary skill in the art at the time the invention was made that the absorbent assembly could overlap the bands and be rendered non-elastic in this region since the Kuwasaka discloses elastic members are secured to the panel 1 and Kuwasaka discloses a disposable pant-like diaper with varying regions of stretching force contained in the elastics for improved fit and leakage prevention.

Regarding claims 14-15 Kuwasaka discloses a waistband with elastic members 7 and leg band elastics 5a-5c but does not expressly disclose the number of strands in the elastic members. It would be obvious to one of ordinary skill in the art at the time the invention was made that the waistband elastics have more elastic strands than the leg bands since Kuwasaka discloses a disposable pant-like diaper with varying regions of stretching force contained in the elastics for improved fit and leakage prevention.

Regarding claims 18-20 Kuwasaka discloses a disposable pant-like diaper for improved fit as discussed in rejected claims 1 and 16. Kuwasaka does not expressly disclose width dimensions of the waistband or leg bands. It would be obvious to one of ordinary skill in the art at the time the invention was made that the waistband elastics have more elastic strands than the leg bands since Kuwasaka discloses a disposable

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pant-like diaper with varying regions of stretching force contained in the elastics for improved fit and leakage prevention.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Yamamoto et al. reference, US patent no. 6,364,863, is cited for showing a disposable absorbent undergarment with a back panel tensile stress greater than the front panel tensile stress due to first and second elastic elements to prevent slip-down of the pants. The Kawagushi et al. reference, US patent no. 5,735,839, is cited for showing a disposable diaper with leg and waist opening stresses and second and fourth elastic stresses. The Shimada et al. reference, European patent no. 1,184,017A1, is cited for showing a disposable pull-on diaper with second elastic means having a greater stretch stress than fourth elastic means.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura C. Hill whose telephone number is 571-272-7137. The examiner can normally be reached on Monday through Friday (off every other Friday).

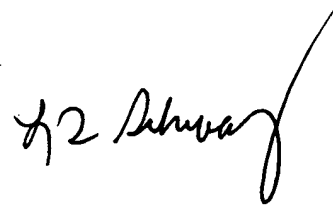
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Schwartz can be reached on 571-272-4390. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Laura C. Hill  
Examiner  
Art Unit 3761

LCH



Larry I. Schwartz  
Supervisory Patent Examiner  
Group 3700